



The Salisbury Planning Board held its regular meeting Tuesday, May 26, 2009, in the City Council Chamber of the Salisbury City Hall at 4 p.m. with the following being present and absent:

PRESENT: Karen Alexander, Dr. Mark Beymer, Maggie Blackwell, Robert Cockerl, Tommy Hairston, Richard Huffman, Craig Neuhardt, Albert Stout, Bill Wagoner and Diane Young

ABSENT: Valarie Stewart

STAFF: Preston Mitchell, Diana Moghrabi, and David Phillips

This meeting was digitally recorded for *Access 16* television by Jason Parks.

Robert Cockerl chaired this meeting; he called the meeting to order and offered an invocation. The minutes of the April 28, 2009 meeting were approved as submitted. The Planning Board adopted the agenda as submitted.

Robert Cockerl read the Courtesy Hearing explanation and procedures.

NEW BUSINESS

A. District Map Amendment

LDOZ-2-02-2009 Sam Stephens/Novant Health, Inc.
Address: 102 Mocksville Avenue
Tax Map–Parcel(s): 006-246
Size / Scope: Approximately 1 acre (1 parcel)

Request to amend the Land Development District Map by rezoning approximately one acre (one parcel) from a split-zone of NEIGHBORHOOD MIXED-USE (NMU) and RESIDENTIAL MIXED-USE (RMU) to entirely RESIDENTIAL MIXED-USE (RMU).

Bill Wagoner recused himself for this case due to conflict of interest. Dick Huffman disclosed that he is a part owner of a house nearby.

Preston Mitchell made a staff presentation; staff recommended in favor of the rezoning. This rezoning is meant to fix the split zoning by zoning the entire site to RMU district. Staff does not believe that this petition is inconsistent with the Vision 2020 Comprehensive Plan. The current split zoning makes implementation of the Land Development Ordinance difficult.

Neighborhood Mixed-Use (NMU) district (No maximum dwelling units per acre)

The Neighborhood Mixed-Use District is coded to provide pedestrian-scaled, higher density residential homes and opportunities for limited scale commercial activities along existing mixed-use corridors, in areas of transition, and at the functional center of new neighborhoods. Development in this district should encourage pedestrian activity through construction of mixed-use buildings and connections to adjacent neighborhoods. Buildings in this district are typically small and detached.

Residential Mixed-Use (RMU) district (18 dwelling units per acre maximum)

The Residential Mixed-Use District is intended to provide for areas for higher density residential development in close proximity (within ½ - ¼ mile) to existing and planned commercial centers such as the Corridor Mixed-Use District (CMU) and the Downtown Mixed Use District (DMU). The intent is to create higher density residential areas that compliment commercial districts with physical proximity and pedestrian connectivity. Different housing types and lot styles along with a limited mix of neighborhood-friendly uses are encouraged.

All permitted uses are listed in the Land Development Ordinance in Chapter 2.

Those speaking in opposition

NONE

Those speaking in favor

Sam Stephens, with Landmark Builders of Winston-Salem, NC, spoke on behalf of the current owner of the property and the buyer of the property (an undisclosed developer). Office building is being proposed for the property. At this time, it will not be medical office space (accounting and such); however, it could be an option in the future. It will be support services for the hospital.

Board Discussion

Diane Young made a MOTION to approve this rezoning. Karen Alexander seconded the motion. "The Planning Board finds and determines that rezoning petition **LDOZ-2-02-2009** is consistent with the goals objectives, and policies of the Vision 2020 Comprehensive Plan, and hereby recommends Approval. Tommy Hairston seconded the statement of consistency. All members voted AYE. (9-0)

This would go forward to City Council with a recommendation to approve. Bill Wagoner returned to the dais.

B. Special Use Permits

Those speaking during the Special Use Permit hearings were sworn in for the quasi-judicial proceedings. All comments should be submitted as evidence and not opinion.

David Phillips made a staff presentation.

SUP-01-09 Proposed Secondary Dwelling
702 Mitchell Avenue
TM-013, Parcel-048
Zoning HR

Ms. Marsha G. Wood submitted the request for a Special Use Permit to allow for the construction of a secondary dwelling unit with a 748 square-foot building footprint and a total of 1200 square feet of living area. Secondary dwelling units are allowed with the issuance of a Special Use Permit as per the Land Development Ordinance Chapters 2.7.C and Additional Standards Section 3.3.K.

Special uses are land uses that are generally compatible with the land uses permitted by right in a zoning district, but which require individual review of their location, design, and configuration so as to evaluate the potential for adverse impacts on adjacent property and uses. Special uses ensure the appropriateness of the use at a particular location within a given zoning district. The evaluation and approval of a Special Use permit shall be governed by quasi-judicial proceedings, which are based on sworn testimony and evidence presented at the hearing. This evidence is based on three general standards being met. The following statements have been taken from the application submitted by applicant: (statements in parenthesis provided by the applicant.)

- (a) **The use meets all required principles and specifications of the Ordinance and any adopted land use plans and is in harmony with the general purpose and intent and preserves its spirit:** (All provisions, as described in Chapter 3: Additional Use Standards have been addressed. Yes, based on responses to the additional standards, this plan meets all required principles and specifications of the ordinance.)
- (b) **The proposed plan as submitted and approved will be visually and functionally compatible to the surrounding area:** (Yes, the proposed plan, as submitted, is visually compatible to the surrounding area. The proposed secondary dwelling is compatible with the surrounding neighborhood and will visually enhance the area. The function of the secondary dwelling is that of a single-family residence. It is functionally compatible to the surrounding area. I will live in the secondary dwelling.)
- (c) **The public health, safety and welfare will be assured and the proposed development will not substantially injure the value of adjoining property and associated uses if located where purposed:** (Based on the investment to be made in

this secondary dwelling, the value of surrounding properties will surely increase. The public health, safety, and welfare will be assured.)

Section 3.3.K of the Land Development Ordinance states that Secondary dwelling units within single-family houses or on single-family lots shall be encouraged and designed to meet housing needs. The applicant is required to meet additional standards for a secondary dwelling and has replied to the following:

- 1. The accessory dwelling unit shall be subordinate to the primary living quarters:**
(The primary living quarters is on 702 Mitchell Avenue. The secondary structure will be on the same parcel facing Boyden – to the rear of the primary structure.)
- 2. Not more than one (1) secondary dwelling unit is permitted per lot:**
(There will be only one (1) secondary dwelling unit.)
- 3. Any secondary dwelling unit shall be located in the rear yard of a single family use lot subject to the requirements of this Section:**
(The primary living quarters is on 702 Mitchell Avenue. The secondary structure will be on the same parcel facing Boyden – to the rear of the primary structure.)
- 4. Secondary dwelling units may be created as a second story within detached garages provided that the height of the secondary dwelling unit and/or garage does not exceed the height of the principal structure on the lot. There shall be a two (2) story height maximum:**
(The proposed secondary dwelling is a two (2)-story height structure.)
- 5. The secondary dwelling unit may not be larger than fifty (50) percent of the gross floor area of the principal structure with a minimum habitable area of not less than 300 square feet. Maximum building footprint for a secondary dwelling unit shall be 750 square feet:**
(The gross floor area of the principal structure is 3,626 square feet. The building footprint for the proposed secondary dwelling is 748 square feet. *The maximum area for the secondary dwelling is 1,813 square feet. The proposed dwelling unit is 1,200 square feet.*)
- 6. No additional parking spaces are required for the secondary dwelling unit provided the number of spaces for the principal structure (per Chapter 10) is satisfied:**
(The proposed plan meets the minimum parking requirement of two spaces for the principal structure.)
- 7. Secondary dwelling units shall be architecturally compatible to the principal building (e.g. pitch of roof, wall or trim materials, architecture style, window details):**
(The main structure contains area of red brick. The secondary structure will have brick at the foundation area. Both structures will contain siding. The pitch of the secondary

building's roof is similar to that of the primary structure. Both structures contain window shutters.)

8. The property owner(s) on which the accessory dwelling unit is to be located shall occupy at least one of the dwelling units on the premises (GR, UR, & HR only):

(My daughter and her husband and my three grandchildren will occupy the primary dwelling. I will, alone, occupy the secondary dwelling unit.)

The burden is on the applicant to present sufficient evidence to allow the Planning Board and City Council to make findings that the required standards will be met. It is the burden of the opponent to present sufficient evidence that a standard will not be met. If insufficient evidence is presented that the required standards will be met, then the Special Use Permit must be denied. If un-contradicted evidence is presented that all of the standards will be met, then the Special Use Permit must be issued. If un-contradicted evidence is presented that even one of the general or specific standards will not be met, then the Special Use Permit must be denied. If there is conflicting evidence, the Board decides what the facts are and makes a decision accordingly.

Those speaking in opposition

Steve Thomas, 1208 Boyden, said he has the desire to keep the integrity of the single-family neighborhood. This neighborhood is zoned "single family", allowing for one house per parcel of land. There is plenty of space between the houses in this part of Fulton Heights.

He and his wife grew up in Salisbury and were excited about moving back after being gone 18 years. They like the location and history of their home. They enjoy their porch, nature and street activity. They do not wish to look directly at another house from their porch. There is a great tree that could be damaged with the construction of the proposed house. He provided a photograph of the tree.

He believes parking will be a problem on the street and block emergency services. Mr. Thomas believes that this will devalue the property and increase housing density in this neighborhood. Many accessory dwelling units are used to produce income for the main house.

Mandy Monath, 705 Mitchell Avenue, came to support her neighbor, Steve Thomas. She offered a description supporting how much they enjoy the neighborhood as it is now. The Thomas family shares an alley with Jane Nussman who is selling her property. The Thomas home is very close to the alley, which runs between them. The proposed house would sit directly in front of the Thomas's screened porch and closer to the Thomas home than the occupants of the main house and the seller's house next door. The Thomas family is asked to share a disproportionately large part of the inconvenience inherent in this plan.

What would the status of the property be once it is built? The applicant's family would be the fourth family to occupy this property in the past four years; it has not been a very stable property. Are there rules to prevent this house from becoming a rental property? Adjacent rental property can sometimes diminish property values. There is ample rental property in

Fulton Heights, but in general, the neighborhood has tried to steer a course toward more stable single-family housing. There are a number of small cottage-like properties in the neighborhood available for rent or purchase.

“It is without any malice toward the seller or the applicant that I urge Planning Board to reject this proposal.”

Those speaking in favor

Marsha Wood, 360 Autumn Chapel Drive, stated that she moved about five years ago to be closer to her daughter and her family. They had both spent their life in Spencer.

This will not be a rental property; it is solely for her use to be closer to her family. Ms. Wood is a retired schoolteacher (38 years) and a healthy 61 years old. She is a master gardener and her yard will be a lovely addition to the community.

Ms. Wood believes she has followed every letter of the law and has studied the Land Development Ordinance at length. She intends to meet all requirements. She has no intentions of parking on the street and does intend on using the alley.

Jane Nussman, 708 Mitchell Avenue, lives at property adjacent to this property in question; she is the current owner of the property. Ms. Nussman grew up in Fulton Heights. She has renovated some properties and sold some, too. She has a desire to protect the neighborhood.

She has talked with Ms. Wood about the advantages of this proposal for her family; Ms. Nussman has known their family for several generations. Ms. Wood’s current property is immaculately maintained.

Ms. Nussman stated that she is in favor of accessory dwellings in the LDO.

Board Discussion

Maggie Blackwell asked staff to clarify what the LDO says about renting “granny flats.”

The ordinance states that one of the two structures must be occupied by the owner of the property. Technically somebody could rent out that secondary dwelling unit. The intent is to allow extended family to live in close proximity.

Karen Alexander had the understanding that an accessory building referred to a garage and not a living unit. Preston responded that we have provisions for both accessory structures and secondary dwelling units. This property would not meet the LDO infill standard requirements to be subdivided. It would be difficult to enforce any familial requirements for secondary dwelling units. An accessory building would not go through the special use permit process.

Diane Young asked how close the screened porch is to the edge of the alley. (Mr. Phillips thought approximately 17 feet) Mr. Thomas said he was right on the property line and the alleyway is 10 feet.

Bill Wagoner confirmed that the additional eight standards have been met. The porch of Mr. Thomas's house may have been built into the setback. He asked Ms. Woods to explain what criteria she used to site the house at that location.

Ms. Wood said the setbacks are further than required. She felt the structure should be in line with the Thomas house so as not to be sticking out in front of them. She worked with a surveyor. The proposed house is 26 feet in depth. She brought side elevations for the Board to view. Ms. Wood wants her grandchildren to have access to open space to play in the back yard. Arborists have recommended the removal of a large tree due to possible damage and the possibility of the tree falling onto the adjacent property. Several dogwoods will remain.

A porch was originally planned, but due to the footprint requirements of the house, the porch was eliminated.

Bill Wagoner believes Ms. Wood has made a great effort to meet all three standards plus the additional eight, except for one item. (It could be a matter of semantics.) Standard B, functional compatibility—feels like the specific location of this secondary dwelling unit is functionally incompatible with its adjacent resident and can be remediated. Mr. Wagoner latter stated that he was premature in this statement and considered other points.

Karen Alexander agreed with Bill Wagoner—it is not the best location. We have to consider the proximity to the screened porch.

Mark Beymer thinks the location is well within their rights. "That was the public standards." This is an attractive design for a secondary dwelling place. He believes it will add value to the neighborhood in the long run. "I cannot see any reason not to support this."

Diane Young lives in Fulton Heights and has a neighbor less than 10 feet from her house and another that is probably 14 feet. We learn to live in close proximity. The design will help "infill" within the existing streetscape. This is somewhat subjective. Ms. Young can understand the Thomas family's position, but it does not meet setback requirements. We cannot penalize Ms. Wood because the Thomas porch was built within the setback. She is in favor of the special use permit.

Maggie Blackwell lives three blocks away and would like to be able to please all of her neighbors. However, she agreed with Dr. Beymer that for an accessory dwelling unit this is the best possible condition. It is within the intent of the LDO and character of the neighborhood.

The building of this "granny flat" protects this house from rental more than it protects yours or mine. "My house could be bought by a remote landlord and so could yours." By having the dwelling unit there, the ordinance requires that the owner occupy one of the two dwellings. She supports the concept of families wanting to be together.

Mark Beymer made a MOTION regarding evidence based on finding of fact. Based on the evidence provided to this board:

- A. This use meets all required principles and specifications of the ordinance and any adopted plans and is in harmony with the general purpose and intent and preserves its spirit;
- B. The proposed plan as submitted and approved will be visually and functionally compatible to the surrounding area;
- C. The public health, safety and welfare will be assured and the proposed development will not substantially injure the value of adjoining property and associated uses if located where it has been identified.

The Salisbury Planning Board recommends approval of **SUP-01-09**. Tommy Hairston seconded the motion and all members voted AYE. (10-0)

This item will be forwarded to City Council. David Phillips will handle proper public notifications. He expects a public hearing June 16, 2009.

SUP-02-09

Havana Knights Cigar & Wine Shop
117 South Lee Street
TM-010-D, Parcel 005
Zoning DMX with LHO

David Phillips made a staff presentation. DMX is exempt from parking. There is a public lot at the southeast corner of Lee and Fisher streets, on-street parking, and public parking behind City Hall. There is also a private lot across the street.

Mr. Dunkan Echevarria submitted the request for a Special Use Permit to allow on site alcohol consumption as part of the use within a retail establishment located at 117 South Lee Street in accordance with the Land Development Ordinance Chapters 2.7.C and Additional Standards Section 3.3.D. The alcohol sales will be associated with a cigar bar. Businesses where on-site alcoholic beverages are sold which are not part of a larger restaurant are classified as a bar, tavern or nightclub based on the use definition of the Land Development Ordinance.

The bar, tavern, or nightclub use is permitted in the DMX district with the approval of a special use permit. This use also has an additional requirement that no such facility shall be located within five hundred (500) feet of any lot containing a school. Staff has determined there are no schools within 500 feet of the proposed establishment.

Special uses are land uses that are generally compatible with the land uses permitted by right in a zoning district, but require individual review of their location, design, and configuration so as to evaluate the potential for adverse impacts on adjacent property and uses. Special uses ensure the appropriateness of the use at a particular location within a given zoning district.

The evaluation and approval of a Special Use permit shall be governed by quasi-judicial proceedings, which are based on sworn testimony and evidence presented at the hearing. This evidence is based on three general standards being met. The following statements have been taken from the application submitted by applicant:

- (a) **The use meets all required principles and specifications of the Ordinance and any adopted plans and is in harmony with the general purpose and intent and preserves its spirit:** We are looking to bring a unique experience through our shop here in Salisbury with hand-rolled cigars and great wines. We work with national providers and international ones as well who deal in fine cigar products. Our wines will come from Spain, Chile, Argentina and Italy.
- (b) **The proposed plan as submitted and approved will be visually and functionally compatible to the surrounding area:** Our concept is to create a beautiful retail and lounging facility. The store will cater to those who want to come in, buy and leave or those who want to sit and enjoy their purchases.
- (c) **The public health, safety and welfare will be assured and the proposed development will not substantially injure the value of adjoining property and associated uses if located where proposed:** We look forward to adding a beautiful and engaging storefront. One that will add to the aesthetic value of the building and the street area where we can be found.

The Special Use Permit is for the consumption alcoholic beverages on site only. The use of a cigar bar is permitted by right as general retail sales and should not be considered as part of the Special Use Permit.

Public comment

Clyde (Overcash), 219 S. Lee Street was sworn in. He asked why the zoning signs did not have a date on them. He said staff did not return his call. He also asked where customers would park. He said there were lots of drunks, crack heads and prostitutes in the neighborhood and we don't want to add to that atmosphere. "We" would like to see a police presence. Does he propose any kind of security?

Preston stated that the date is not put on the sign because there are a number of hearings associated with one case. The Institute of Government recommends the sign give simple information—the case number, who to call and make it obvious something is happening. Preston said he returned the first phone call, but the second phone call he was unable to return because a phone number was not provided. The call came through the switchboard.

Karen Cranford, 119 S. Lee Street is a CPA in the unit next door or adjacent to this property. She has met Duncan and he has been a pleasant, good neighbor so far. She does have concerns about cigar smoke and wondered what provisions would be made to control the crowd. There have been problems in the past with bottles, cigarette butts and general trash. There is a property association.

Duncan Echevarria, of 117 S. Lee Street, said he is trying to bring in a cigar bar (boutique cigars) at this site. He will be introducing private labels. He likes the developing trend in the “brick street” area.

Mr. Echevarria just moved here from Miami about two months ago. He does have family here in Salisbury. He is an interior / landscape designer by trade. His specialty is staging a property for resale. His career was tied to the real estate market in the Miami area and when things started “tanking” he started to lose money.

A cheap cigar smells; a high-end, hand-rolled cigar has an aroma. Wines and Cuban coffee will be great pairings for the cigars. There will be a small tapas menu. He has a smoke eater unit rated for 4,000 square feet for a building that is 1,000 square feet. (They burn wood for the pizza ovens next door.) No cigarettes or chewing tobacco will be allowed. Patrons must purchase one cigar per hour.

He said he was ex-military and there will be security cameras. He has not seen the “bad” people Clyde referred to. He has met some very nice people in the neighborhood. This high-end establishment will not tolerate drunken behavior. A police officer is dedicated to the downtown district.

New laws regarding smoking in public places do not apply to cigar bars.

Board discussion

Albert Stout did not believe this end of Lee Street had the problems that other areas may have.

Diane Young confirmed that this permit runs with the property and can be rescinded by City Council.

Maggie Blackwell made a motion to extend the meeting past 6 o’clock. All agreed.

Dick Huffman made a MOTION that SUP-02-09 be approved. Planning Board finds the use meets all the required principles and specifications of the ordinance and any adopted plans and is in harmony with the general purpose and intent and preserves its spirit. Planning Board also finds that the proposed plan as submitted and approved will be visually and functionally compatible with the surrounding areas. The public health, safety and welfare will be assured and the purposed development will not substantially injure the value of adjoining property and associated uses if located where purposed. Also we find there is no school within 500 feet of this location.

Albert Stout seconded the motion with all members voting AYE. (10-0)

This is tentatively proposed to go to City Council June 16, 2009, at 4 p.m.

COMMITTEES

The two legislative committees met concurrently with the chamber being divided. Joe Morris and Preston Mitchell staffed the meetings.

A. LDOTA-07-2009 Infill Provisions for Minimum Lot Width

Preston Mitchell reviewed the minutes of the Legislative Committee A meeting. The infill provisions were built into Land Development Ordinance as a measure of protection for existing neighborhoods. These people have not come forward, because they do not know they are being protected.

The Legislative Committee A (Valarie Stewart, Chair; Mark Beymer, Vice Chair; Robert Cockerl, Karen Alexander, Richard Huffman) met May 12 at 4 p.m. in the City Hall Council Chamber.

A Motion was made to keep the current formula and text the same; staff will develop exception language and bring it forward to the committee at a later date.

Mark Beymer believes the present standard is functioning. If you change it, you have to keep changing it. We should stand by what we have now and allow City staff to do their jobs. He does not want to see lot sizes slowly diminished.

B. City Council has made a request for Planning Board to review sidewalk requirements on industrial zoned properties. Legislative Committee B (Albert Stout, Chair; Craig Neuhardt, Vice Chair; Bill Wagoner, Diane Young, Tommy Hairston, Maggie Blackwell) met May 12 at 4 p.m. in the City Hall Council Chamber.

Albert Stout report that, after a lengthy discussion, they decided that they needed more information. Staff will provide the formulas that will enable the committee to craft guidelines. Due to some conflicts, this will be revisited in July.

OTHER BOARD BUSINESS

The next Planning Board meeting will be June 23, 2009.

There being no further business to come before the Planning Board, the meeting was adjourned at 6:23 p.m.

Robert Cockerl, Chair

Diana Moghrabi, Secretary